These cases are both interesting from several points of view, but especially because they illustrate two important limitations placed by the law upon the activity of trades unions.

In the Massachusetts cases, Donovan acted as the agent of the union under the authority given by the contract, and the conduct of Donovan is treated as the conduct of the union.[11] And while the court expressly distinguishes this from the case of one who seeks employment and is prevented from getting it by union activity, it seems probable that in that case, too, the right of the individual "to dispose of his labor as he will," and the narrow range within which the court admits this struggle for a share in the product of industry, on the part of the trade-union portion of the working class, to come within the category of a kind of competition advantageous to society, would prevent the union from availing itself in effectual ways of the closed-shop contract, for the purpose of extending its membership.

From the "Stop-Day" case, it is clear that, where its authority prevails, the relation of the union to its members is not such as to justify it in advising them as a matter of trade policy to do anything which constitutes the breach of a legal right, although it may well be argued that where such combinations are held to be lawful, the chief functions for which they are organized, namely, the advice and direction of the members in relation to trade controversies should be held likewise lawful.[12]

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LIMITATION OF HOURS OF LABOR AND THE SUPREME COURT

The decision of the U. S. Supreme Court in the case of Lochner *vs.* New York, declaring unconstitutional a ten-hour law for bakeries, has been the subject of much comment, both favorable and adverse, not only in this country, but in Europe as well. While the main interest in it has been social and economic, it is upon legal grounds that it requires and is entitled to be judged.

In the development of constitutional doctrine, the decision will be

[11] The act is referred to as a "boycott," p. 607.

[12] W. H. Beveridge, "The Reform of Trade Union Law," *Economic Review*, XV, 137.

memorable as the first one which the Supreme Court, in a case not involving interstate relations, enforces a constitutional right of liberty of contract against the exercise of the police power on the part of the state, in opposition to the judgment of the courts of that state that such power was legitimately exercised.

This new departure is all the more remarkable, as, in the very domain of labor legislation, the Supreme Court seemed to have committed itself to the opposite policy. In view of the practical unchangeability of the federal constitution, the court had been reluctant to stand in the way of regulative legislation (not touching commerce) approved by the highest state courts, by a narrow interpretation of its provisions. Upon this salutary principle, it had affirmed the validity of statutes prohibiting the payment of wages in truck, and even of statutes limiting the hours of labor, not only on work done for municipalities, but also in such private employments as mining and smelting.

To those acquainted with the earlier cases, the decision in Lochner *vs.* New York must have come as a surprise, which a careful reading of Justice Peckham's opinion is not calculated to diminish. The Supreme Court does not overrule the decision sustaining the miners' eight-hour law (Holden *vs.* Hardy, from which J. Peckham dissented); it does not declare the regulation of hours of labor to be beyond the power of the legislature; it does not say that the number of hours fixed upon makes an unreasonably short day; it does not say that the bakers' occupation is as free from insanitary features as all others which the legislature does not regulate; it merely declares the trade not sufficiently insanitary to permit this particular regulation.

Obviously, a limitation of legislative powers, which draws the line somewhere between smelting works and bakeries, cannot be based upon a fundamental constitutional distinction. The importance of the decision must, therefore, be sought, not in the enunciation of a new or valuable theory of individual rights — although the emphasizing of the freedom of contract in labor relations as a constitutional right is worthy of notice — but in the judicial attitude which it represents. The case strongly illustrates the growing assertion of the judicial prerogative to declare laws unconstitutional, because a particular legislative measure does not meet the views of the court as to what is reasonable or necessary regulation.

The most unsatisfactory feature of the case is its method of

revising the legislative judgment. Not all our statutes are the fruit of careful investigation, but it would be difficult to find an illustration of more offhand and superficial treatment of difficult economic problems than the discussion here presented of the conditions of the bakers' occupation. Apparently, the court is quite willing to make popular impressions or popular ignorance the test of the needs of a trade. In this respect, it is to be hoped that the decision will not make a precedent.

Lochner *vs.* New York will undoubtedly be cited as a leading case in labor legislation. It will be relied on by all who are opposed to state interference with labor relations. But they will probably find that the decision will not greatly embarrass the Supreme Court, if at any time, it should be inclined to take a more liberal view of the legislative powers of the state. The court will simply have to hold that the particular conditions are sufficiently dissimilar to justify legislative interference. Holden *vs.* Hardy will be as good a precedent as Lochner *vs.* New York. The regulation of hours of labor in mines stands unshaken, and the decisions sustaining the limitation of female employment are more likely to be sustained than otherwise. Some ten-hour-day laws of southern states, affecting woolen and cotton operatives, must probably be deemed unconstitutional. There is nothing in the law, as now established, which makes the outlook for increased regulation of labor relations hopeless; but any incisive interference with the freedom of contract between employer and employee will have to run the risk of being defeated in the Supreme Court.

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